

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY )	
KENTUCKY, INC. FOR A CERTIFICATE OF )	
PUBLIC CONVENIENCE AND NECESSITY TO )	
CONVERT ITS WET FLUE GAS )	
DESULFURIZATION SYSTEM FROM A )	CASE NO.
QUICKLIME REAGENT PROCESS TO A )	2025-00002
LIMESTONE REAGENT HANDLING SYSTEM AT )	
ITS EAST BEND GENERATING STATION AND )	
FOR APPROVAL TO AMEND ITS )	
ENVIRONMENTAL COMPLIANCE PLAN FOR )	
RECOVERY BY ENVIRONMENTAL SURCHARGE )	
MECHANISM )	

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**PETITION FOR CONFIDENTIAL TREATMENT OF DUKE ENERGY  
KENTUCKY, INC. FOR CERTAIN RESPONSES TO INTERVENOR SIERRA  
CLUB’S FEBRUARY 14, 2025 FIRST REQUEST FOR INFORMATION**

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Duke Energy Kentucky, Inc. (Duke Energy Kentucky or Company), by counsel, pursuant to 807 KAR 5:001, Section 13(2), KRS 61.878(1)(c), and other applicable law, moves the Public Service Commission of Kentucky (Commission) for an Order granting confidential treatment to the following responses and attachments to Intervenor Sierra Club’s (SIERRA) First Request for Information issued on February 14, 2025:

- (1) SIERRA-DR-01-006(b) Confidential Attachment;
- (2) SIERRA-DR-01-008 Confidential Attachments 1 through 3;
- (3) Highlighted portion of the response to SIERRA-DR-01-009;
- (4) SIERRA-DR-01-015 Confidential Attachments 1 through 5;
- (5) Highlighted portion of the response to SIERRA-DR-01-017;
- (6) Highlighted portion of the response to SIERRA-DR-01-018;

- (7) Highlighted portion of the response to SIERRA-DR-01-019;
- (8) Highlighted portion of the response to SIERRA-DR-01-020;
- (9) Highlighted portion of the response to SIERRA-DR-01-028; and,
- (10) Highlighted portion of the response to SIERRA-DR-01-032.

Specifically, Duke Energy Kentucky seeks confidential treatment of information referred to herein as the “Confidential Information,” which, broadly speaking, includes sensitive generating operating characteristics, information related to vendor pricing, counterparties to confidential solicitations and negotiations, market and reliability risks, contracts, assessments of critical utility infrastructure, as well as internal cost projections.

## **I. MOTION FOR CONFIDENTIAL TREATMENT**

### **a. Statutory Standard**

Administrative Regulation 807 KAR 5:110, Section 5 sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “each basis upon which the petitioner believes the material should be classified as confidential” in accordance with the Kentucky Open Records Act, KRS 61.878. *See* 807 KAR 5:110 Section 5(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(c)(1) excludes from the Open Records Act:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records[.]

This exception “is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage.” Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997).

KRS 61.878(1)(c)(1) requires the Commission to consider three criteria in determining confidentiality: (1) whether the record is confidentially disclosed to an agency or required by an agency to be disclosed to it; (2) whether the record is generally recognized as confidential or proprietary; and (3) whether the record, if openly disclosed, would present an unfair commercial advantage to competitors of the entity that disclosed the records. The Confidential Information for which Duke Energy Kentucky is seeking confidential treatment, each of which is described in further detail below, satisfies each of these three statutory criteria.

**b. Responses and Attachments for Which Confidential Treatment is Sought**

**i. SIERRA-DR-01-006(b) Confidential Attachment**

SIERRA Request No. 01-006 states as follows:

Please refer to the Direct Testimony of Witness Verderame, page 17, lines 9-19.

- a. Please provide the years over which the stochastic production cost modeling was performed.
- b. Please provide the supporting workbooks, with all formulas and links intact, that support the stochastic production cost modeling.

In response to SIERRA Request No. 01-006, Duke Energy Kentucky provides SIERRA-DR-01-006(b) Confidential Attachment, which contains detailed modeling information, Company analysis of coal unit operation and forecasts, pricing for resources, and detailed PowerSIMM Modeling characteristics. The Company requests that this

Attachment be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1) and additionally requests that the Attachment be treated as confidential in its entirety pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b).

The confidential data is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation (are) ‘generally recognized as confidential or proprietary.’” The confidential data includes production cost modeling characteristics, outputs showing projected generation unit operational and dispatch characteristics and thus, satisfies this standard, as Duke Energy Kentucky’s modeling represents the inner workings of a corporation and, therefore, meets the second element of the statutory standard. The confidential data also satisfies the third element, as it contains commercially sensitive information related to the Company’s financial and operational projections and disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky as competitors would gain invaluable insight into the Company’s financial valuation of resources and outlook.

**ii. SIERRA-DR-01-008 Confidential Attachments 1 through 3**

SIERRA Request No. 01-008 states as follows:

Please refer to the Direct Testimony of Witness Gagnon, page 3, lines 3-6.

- a. Please provide the EnCompass modeling input and output files for each modeling run performed as part of the 2024 IRP.
- b. Please provide the supporting workbooks, with all formulas and links intact, used to develop the Present Value of Revenue Requirements (“PVRR”) for each of the modeling runs performed as part of the 2024 IRP.

In response to SIERRA Request No. 01-008, Duke Energy Kentucky provides SIERRA-DR-01-008 Confidential Attachments 1 through 3, which contains detailed modeling information, Company analysis of coal unit operation and forecasts, pricing for resources, and detailed modeling input and output characteristics. The Company requests that these Attachments be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1) and additionally requests that these Attachments be treated as confidential in their entirety pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b).

The confidential data is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation (are) ‘generally recognized as confidential or proprietary.’” The confidential data includes production cost modeling characteristics, outputs showing projected generation unit operational and dispatch characteristics and thus, satisfies this standard, as Duke Energy Kentucky’s modeling represents the inner workings of a corporation and, therefore, meets the second element of the statutory standard. The confidential data also satisfies the third element, as it contains commercially sensitive information related to the Company’s financial and operational projections and disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky as competitors would gain invaluable insight into the Company’s financial valuation of resources and outlook.

**iii. Highlighted portion of the response to SIERRA-DR-01-009**

SIERRA Request No. 01-009 states as follows:

Please refer to the Direct Testimony of Witness Gagnon, page 10, lines 13 – 21, where it states, “At the time that forecasts and assumptions

were developed for the IRP (late 2023), the economics of the conversion project were favorable in comparison to the cost of reagents that would be required without the conversion even if the unit were to stop burning coal by 2030.” Please provide the economics of the conversion project, including capital and operational costs, that were evaluated at the time forecasts and assumptions were developed for the IRP.

In response to SIERRA Request No. 01-009, Duke Energy Kentucky provides analysis that includes and contains forecasted compliance costs pricing, and projected savings that informed the Company’s resource and planning strategies and evaluations in procuring a reliable source of supply to meet customer demand. The Company requests that the highlighted information contained with the response be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information was derived through confidential and proprietary analysis, including projections of vendor pricing and generation unit operations and is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The highlighted information satisfies the second element of the standard as it includes Duke Energy Kentucky’s modeling assumptions and results, which represents the inner workings of a corporation recognized as confidential and proprietary. The confidential data also satisfies the third element, as it contains commercially sensitive information related to the Company’s financial and operational projections and disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky as competitors would gain invaluable insight into the Company’s financial valuation of resources and outlook.

**iv. SIERRA-DR-01-015 Confidential Attachments 1 through 5**

SIERRA Request No. 01-015 states as follows:

Please refer to the Direct Testimony of Witness Verderame, page 8, lines 4-6. Provide all documents associated with Duke’s attempt to

negotiate more competitive pricing structures including alternative contract lengths.

In response to SIERRA Request No. 01-015, Duke Energy Kentucky provides SIERRA-DR-01-015 Confidential Attachments 1 through 5, which include and contain detailed vendor pricing and contract information, contract negotiations, and the Company's strategies and evaluations in procuring a reliable source of cost-effective reagent supply for East Bend's wet-flue gas desulfurization process. The Company requests that these Attachments be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1) and additionally requests that these Attachments be treated as confidential in their entirety pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b).

The confidential data was derived through a confidential request for proposal (RFP) and subsequent negotiation process, and is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. The confidential data satisfies the second element of the standard, as negotiated pricing information is generally recognized as confidential and proprietary. The confidential data also satisfies the third element because disclosure of these negotiations, RFP participation, and risks identified would place the Company at a disadvantage with future such negotiations, as counter-parties would have access to the Company's risk assessments, and charges from parties, potentially resulting in a lack of bargaining power for the Company and less favorable contract terms.

**v. Highlighted portions of the responses to SIERRA-DR-01-017; SIERRA-DR-01-018; SIERRA-DR-01-019; SIERRA-DR-01-020; SIERRA-DR-01-028; and SIERRA-DR-01-032**

SIERRA Request No. 01-017 states as follows:

Please refer to the Direct Testimony of Witness Verderame, page 9, line 6. Please provide the name of the “current MEL supplier.”

SIERRA Request No. 01-018 states as follows:

Please refer to the Direct Testimony of Witness Verderame, page 6, lines 21-23. Please provide all documents pertinent to the “discussions” noted in these lines.

SIERRA Request No. 01-019 states as follows:

Please refer to the Direct Testimony of Witness Verderame, page 10, line 6. What is the “primary source”?

SIERRA Request No. 01-020 states as follows:

Please refer to the Direct Testimony of Witness Verderame, page 10, lines 7-8. What is the “secondary source”?

SIERRA Request No. 01-028 states as follows:

Please refer to the Direct Testimony of Witness Verderame, page 21, lines 17-18. Provide the basis for the assertion that “there was no high calcium quicklime capacity to be found in the market,” including the time period of when this search was conducted and how the search was conducted, including contacts with any/all persons.

SIERRA Request No. 01-032 states as follows:

Please refer to the Direct Testimony of Witness Verderame, page 26, lines 5-7 and page 10, lines 20-23. Please explain the apparently dramatic MEL market shift from a “lack of industry demand” noted in 2020, to a shortage of supply you now refer to as a “scarcity risk,” resulting in “a lack of a functioning competitive market for the MEL product.”

In response to SIERRA Request Nos. 01-017, 01-018, 01-019, 01-020, 01-028, and 01-032, Duke Energy Kentucky provides the identities of confidential suppliers, potential



suppliers, and contracting counter parties that the Company solicited for potential supply, and RFP participants. The Company requests that the highlighted information within these responses be afforded confidential treatment pursuant to KRS 61.878(1)(c)(1). The highlighted information is not publicly available, thus satisfying the first element of the statutory standard for confidentiality of a proprietary record. In *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that documents detailing the “inner workings of a corporation (are) ‘generally recognized as confidential or proprietary.’” The highlighted information satisfies this standard, as it represents the inner workings of a corporation and, therefore, meets the second element of the statutory standard. The highlighted information also satisfies the third element as disclosure of this information would result in a commercial disadvantage for Duke Energy Kentucky as potential future RFP participants and bilateral counterparties would be discouraged from providing responses if their identity, supply capability, and potential other information like pricing were to be made public. This could have a chilling effect on future RFP participation and have an adverse impact on the Company’s costs, and ultimately prices paid by customers.

**c. Request for Confidential Treatment**

Duke Energy Kentucky respectfully requests that the Confidential Information be withheld from public disclosure for a period of ten years. This will assure that the Confidential Information—if disclosed after that time—will no longer be commercially sensitive so as to impair the interests of the Company if publicly disclosed.

To the extent the Confidential Information becomes available to the public, whether through filings required by other agencies or otherwise, Duke Energy Kentucky will notify

the Commission and have its confidential status removed, pursuant to 807 KAR 5:001 Section 13(10)(a).

WHEREFORE, Duke Energy Kentucky, Inc., respectfully requests that the Commission classify and protect as confidential the specific information described herein.

Respectfully submitted,

DUKE ENERGY KENTUCKY, INC.

*/s/ Rocco D'Ascenzo*

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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing electronic filing is a true and accurate copy of the document being filed in paper medium; that the electronic filing was transmitted to the Commission on February 25, 2025; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

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